

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

Case No. 5:22-cr-00251-M-KS-4

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH PLUMMER,

Defendant.

ORDER

This matter comes before the court on Defendant's pro se motion. [DE 297]. Defendant advises that he has "found grounds of ineffective counsel" and seeks a 60-day extension in which to file a motion pursuant to 28 U.S.C. § 2255. *Id.*

The court lacks jurisdiction to consider a motion for extension of time to file a § 2255 petition. *See United States v. Harris*, 304 Fed. Appx. 223, at \*1 (4th Cir. 2008); *United States v. White*, 257 Fed. Appx. 608, at \*1 (4th Cir. 2007). Nevertheless, it may recharacterize such a motion as a proper § 2255 petition "in the limited instance where the motion for extension of time contains allegations sufficient to support a claim under section 2255." *Johnson v. United States*, No. 5:10-cv-114, 2010 WL 4026086, at \*2 (E.D.N.C. October 13, 2010).

Here, Defendant has alleged that he suffered from ineffective assistance of counsel. [DE 297]. Accordingly, pursuant to *Castro v. United States*, 540 U.S. 375 (2003), the court provides Defendant with notice that it intends on recharacterizing his pro se motion as a proper § 2255 petition. The court warns Defendant that any subsequent § 2255 petitions "will be subject to the restrictions on second or successive motions." *Castro*, 540 U.S. at 383. Defendant may amend or withdraw his motion to include all claims and information he believes to be relevant. If,

however, he withdraws his petition, he will continue to be subject to the one-year statute of limitations that expires (the provisions of § 2255(f)(2)–(4) notwithstanding) on March 14, 2025.

The court permits Defendant to file a response to the court's proposed recharacterization on or before April 11, 2025. The court advises Defendant that if, within the above-described deadline, he does not oppose the proposed recharacterization, the court will treat this motion as a § 2255 petition.

SO ORDERED this 11<sup>th</sup> day of March, 2025.

  
RICHARD E. MYERS II  
CHIEF UNITED STATES DISTRICT JUDGE